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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,978	09/10/2003	David G. Therrien	25452-014	3973

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EXAMINER

OPARE ABETIA, JOSEPH C

ART UNIT	PAPER NUMBER
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2165

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/658,978	<b>Applicant(s)</b> THERRIEN ET AL.	
	<b>Examiner</b> Joseph C. Opare-Abetia	<b>Art Unit</b> 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-7 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 99/10/2003
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

5/24/04  
5/26/04  
3/3/06

## **DETAILED ACTION**

### **Claim Status**

1. The application has been examined and claims 8-11 have been restricted, claims 1 is rejected and claims 2-7 have been allowed as detailed below and are pending in this office action.

### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C.

121:

Group I. Claims 1-7, drawn to a data protection system for protecting files on a fileserver classified in class 707, subclass 202.

Group II. Claims 8-11, drawn to a method for managing node managers in a repository having a plurality of nodes with associated node managers, the method comprising: starting the node managers in a bootstrap state classified in class 711, subclass 161.

The inventions are distinct, each from the other because of the following reasons:

Inventions group I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination group I has separate utility such as data back system. See MPEP § 806.05(d).

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Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with C. Eric Schulman on 03/23/2006 a provisional election was made without traverse to prosecute the invention of a data protection system for protecting files on a fileserver, the system claims 1-7. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

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be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephen Gold (U.S. Pub. No. 20020040405 and Gold hereinafter) in view of Chau-Lang Nguyen (U.S. Patent No. 6202070 and Nguyen hereinafter).

With respect to claim 1, Gold discloses a data protection system for protecting files on a fileserver, the system comprising: a primary repository in communication with the fileserver via a network, the primary repository having: a primary repository node operative to store data (i.e., *"Data is stored in the data repository"*). The preceding text clearly indicates that data, stored in a repository) (page 1, col. 2, lines 50-51); a primary repository node API in communication with the primary repository node and with the network and operative to communicate with the fileserver (i.e., *"According to a third aspect of the present invention there is provided a gateway appliance for sending data to and receiving data from a remote data storage location accessible over a communications link,"* The preceding figure clearly indicates that there is a communication going on between the repository unit (500) and a server (501) because in order the gateway appliance to communicate with the storage location (500) it needs to go through the file server)(page 2, col.1 lines 28-31,fig. 5); a primary repository file transfer module in communication with the network and with the primary repository node and adapted for receiving files from the fileserver (i.e., *"According to a third aspect of the present invention there is provided a gateway appliance for sending data to and receiving data from a remote data storage*

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*location accessible over a communications link*". Module is defined on answers.com as a portion of a program that carries out a specific function and may be used alone or combined with other modules of the same program. The preceding text clearly indicates that some sort of transfer module is being used in the communication for receiving and sending data)(page 1, col. 2, lines 50-51-40); a location component in communication with the data mover and operative to store file location data (i.e., *"Within the data block 700, individual received data transmission packets are stored in locations which are allocated by management module 606. The locations may be allocated sequentially, depend upon a date and timestamp of the data packet received from the gateway appliance"*). The preceding text clearly indicates that data received are stored in at a location therefore, there exist a location component for storing data file)(page 6, col. 2, lines 10-15); a directory service operative to maintain storage state for the primary repository node (i.e., *"In step 903, the directory structure control module 405 stores file location data and time stamp data in a database location corresponding to the individual customer from which the data transmission file has been received"*). The preceding text clearly indicates that the directory maintains the time and file locations of each received data)(page 6, col. 2, lines 63-66...); and a node manager in communication with the location component and with the directory service and operative to manage primary repository node storage capacity and performance (i.e., *"...there is illustrated schematically operation of the operating system 604 of the data repository for managing data storage capacity of a customer"*). The preceding text clearly indicates there is a system manager that oversees the activities in the communication device)(page 7, col. 2, lines 42-44, fig. 6).

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Gold does not disclose supervise the replication of files.

Nguyen discloses supervise the replication of files (i.e., *"Therefore, the files are stored on the database server, but outside of the database structure. Separate routines manage the replication of database and data and their associated software files"*). The preceding text clearly indicates that there is a manager that oversees the replication of data files)(col. 7, line 29-32).

It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify the teaching of Gold with the teaching of Nguyen to include supervise the replication of files with the motivation to being able to copy the data file correctly (Nguyen, col. 7, line 29-32).

#### ***Allowable Subject Matter***

4. Claims 2-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of records Patrick Martin et al. (A Management Information Repository for Distributed Applications Management, pages 1-10, 1996 and Martin hereinafter) and Chau-Lang Nguyen (U.S. Patent No. 6202070 and Nguyen hereinafter) do not disclose, teach or suggest the claimed limitations of (in combination with all other features in the claims) a method wherein the system further comprises: a fileserver having: a filter driver operative to intercept

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input/output activity initiated by client file requests and to maintain a list of modified and created files since a prior backup; a file system in communication with the filter driver and operative to store client files; a policy cache operative to store a protection policy associated with a set of files; a mirror service in communication with the filter driver and with the policy cache, the mirror service operative to prepare modified and created files in a share to be written to the primary repository node as specified in the protection policy associated with the set of files; a location cache in communication with the mirror service and operative to indicate which repository should receive an updated version of an existing file; and a location manager coupled to the location cache and operative to update the location cache when the system writes a new file to a specific repository node as claimed in claim 2. Claim 3-7 depends on claim 2 so therefore; the claims are allowable of the prior art records for the same reasons.

### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Opare-Abetia whose telephone number is (571) 272-6594. The examiner can normally be reached on mon-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JEFFREY A. GAFFIN can be reached on (571) 272-4146.



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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph Opare-Abetia

Patent Examiner

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March 27, 2006

  
JEFFREY GAFFIN  
SUPERVISORY PATENT EXAMINER  
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